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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,481	04/04/2002	Kazuhiro Takagi	AM100246-00	1417
26474 7590 03/09/2007 NOVAK DRUCE DELUCA & QUIGG, LLP 1300 EYE STREET NW SUITE 1000 WEST TOWER WASHINGTON, DC 20005			EXAMINER LEVY, NEIL S	
			ART UNIT	PAPER NUMBER
			1615	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/09/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/019,481	Applicant(s) TAKAGI ET AL.	
	Examiner NEIL LEVY	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 10 and 13-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 10 and 13-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1, 10 and 13-47 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

In view of the APPEAL BRIEF filed on 11/15/06, PROSECUTION IS HEREBY REOPENED. Reconsideration of previous rejections has resulted in reinstatement of these & new rejections as set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

Claim Rejections - 35 USC § 102

Claims 1-10, 13-47 are rejected under 35 U.S.C. 102(b) as being anticipated by TAKAGI et al 5543573

See column 3, line 50; column 4, line 50. The preferable formula (I) has R1-R4 all H, X at the 3 position, inclusive of CF3 (lines 56, 61, 67), Y preferably CN at 4 position (lines 15-18), Z=H (line 19) at 4 position (lines 41, 42) and W is O (lines 48-49)-see formula (I) lines 15-28, column 6. This meets the most limiting compound of instant claim 13, while TAKAGI example 14 is the specific instant elected species. These compounds are

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insecticidal at low dosage (column 1, lines 35-40) and control agricultural and forest insect pests (column 62, lines 6-11). The insecticidal effects are obtained by application to the habitats; trees, soil, houses, crops where pests appear or are expected (column 53, lines 7-22). Application rates are chosen within (column 64, lines 40-56) 0.1-5 kg/10 acres; thus within the instant.

Although ant and termite are not specifically addressed, the method steps, applying the compounds, and application sites (instant claim 1, a wooden part, or soil, instant claim 15, applying to protect a house, instant claim 16-applying to crops, soil) and rates are those of the instant claims, and must result in the same control as of the instant invention as claimed- applying to a wooden part or to soil in the habitat of said pest (claim 1) 0.1-50 g/M² (line 10), the instant compound (example 14).

Claims 1, 10, 13-47 are rejected under 35 U.S.C. 102(b) as being anticipated by Treacy et al 6342578.

Compound I-I, claims of the instant invention was used to control Cockroach, ants, termites or the like (col. 7, lines 32-35), with compound~(Ia) (col. 8).

Application is to plant (crop) foliage or insect habitat (col. 7, lines 9-12).

Throughout the specification, Treacy uses MAY BE, as in :

"- compound of formula I -MAY BE- formulated - " , and "Customary -adjuvants -may be- added - " (col. 6, bottom), meaning that in addition to the crop insects protected with compound Ia, as in B effects @ 0.1ppm in TABLE I , ants & termites may also be controlled, the instant amounts, thus effective not only for the tested species, but also for whatever other pest is present, ant, termite in the case of public health pests. .

That Treacy use a synergist is not prohibited in the instant open claim language.

Claim Rejections - 35 USC § 103

Claims 1,10,13 -47 are rejected under 35 U.S.C. 103(a) as being unpatentable over STEFFERUD '52 in view of TAKAGI et al.

STEFFERUD '52 shows household insects include termites, ants (page 69) and beetles, such as powder post beetles, and lice, mites, flies which damage buildings and wood furniture, clothing, rugs, upholstery. Thus, application to control beetles, mites, flies would also control ants, termites, and wasps, as they are all household insect pests.. TAKAGI (above) shows the instant compounds to be particularly effective and useful at low dosages, and are applied to control those insects (powder post beetles, column 62, line 44) STEFFERUD identifies as of wood and household concerns.

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It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize pest control means to control household insects, shown by Stefferud to include lice, mites, flies, beetles, ants, termites,, to use any of art recognized means, as of the Takagi formulations shown to have marked effectiveness (col. 63, lines 7-22) to control agricultural, forest insect, horticultural, & sanitary insect pests, when applied to trees, fields, inside of houses & ditches around houses at low doses.

Claims 1,10,13 -47 are rejected under 35 U.S.C. 103(a) as being unpatentable over TREACY 6342518 in view of TAKAGI et al 5543573 and STEFFERUD '52.

TREACY (above) show the instant compound as I-A at only 0.01PPM, is effective against lepidoptera and coleoptera including cotton boll worm and tobacco budworm (Table I, II) and also against flies, mosquitoes, cockroach, ants, termites and the lily beetle (column 7, lines 25-35) when applied to habitats or plants (column 7, lines 9, 10, 32-35). STEFFERUD '52 (page 469) show that insects, psocids, crickets, flies, cockroach, ant, termite, wasps, beetles, weevils are found in wood and houses. TAKAGI also teaches the instant compound as example 14, and is effective when applied at the instant dosage (column 64, lines 46-56). TAKAGI also can admix with other insecticides, in order to expand spectrum of controllable insect pests. The pests specified include those of the instant agricultural, forest, and sanitary insect pests (column 62, lines 8-11), of STEFFERUD and TREACY : powder post beetles, Colorado potato beetle, corn rootworm, Japanese beetle, weevil (column 62, lines 43-55,) flies (lines 55-57; 60) mosquitoes (line 60) and tobacco budworms (line 20. 21). One in the household and sanitary insect protection arts would have found it obvious to utilize the instant compounds of TREACY and TAKAGI to control insects in houses and trees, because both show these compounds are applied to trees, inside houses and in ditches around a house or in the soil, where insects are expected to appear (column 63, lines 7-22 of TAKAGI).

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STEFFERUD shows the insect pests controllable by TAKAGI and TREACY are those found in or about houses, all of which are pests to be controlled. The motivation to combine is taught by TAKAGI (column 64, lines 57-63)-expansion of the spectrum of controllable insects; thus permitting all of the household and sanitary pests to be controlled with one application, at rates between 0.1 ppm (TREACY) and 0.1-5kg/10 acres on crops and soil.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize pest control means to control household insects, shown by Stefferud to include lice, mites, flies, beetles, ants, termites,, to use any of art recognized means, as of the Takagi formulations shown to have marked effectiveness (col. 63, lines 7-22) to control agricultural, forest insect, horticultural, & sanitary insect pests, when applied to trees, fields, inside of houses & ditches around houses at low doses. Combination with Treacy's identical compound to enhance range of species controllable would have been obvious to the insect control applicator, in order to not only control crop pests, but also the ants, termites as shown by Treacy.

It would be within the purview of one in the pest control arts to find it obvious to apply the desired amounts and proportions of to optimize desired effects. Further, no objective showing of non-obvious or unexpected results is shown by the applicant to distinguish over the prior art use of the same ingredients to control the same insects, applied to protect the same materials, houses, trees, crops.

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There are no unusual and/or unexpected results obtained since the prior art is well aware of the use of the instant Hydrazine insecticide and its effectiveness to control various species, including ants & termites.

The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular species and application method of interest, reduction of toxicity, cost minimization, enhanced, and prolonged, or synergistic effects.

Applicant has not provided any objective evidence of nonobvious or unexpected results that the administration of the particular compounds of the elected species provides any greater or different level of prior art expectation as claimed. The instant invention provides well known old art recognized compounds, with well known art recognized effects, applied by well known art recognized methods to achieve improved control as is well known in the art.

Applicant's arguments filed as the APPEALBRIEF of 11/15/06 have been fully considered but they are not persuasive.

Applicants argue TREACY requires a second compound, while applicant calls for effective amounts of Formula I-1 alone. Further, applicant argues TREACY do not disclose control one of the specific instant pests with I-1. Examiner finds TREACY, at Tables I, II shows efficacy of I-1 alone (B) but improvement is seen with a synergist. Thus, TREACY is effective. Applicant's claimed effectiveness is also that of TREACY's—applicant's data show many variations of the claimed I-1 to be no more effective than TREACY's. Both applicant and TREACY teach the same compounds, effective against the same insects—ants, termites.

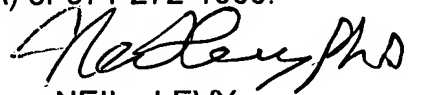
The previously provided declaration did not compare the instant elected compound with that of Treacy or Takagi—presumably because the compounds are identical.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


NEIL LEVY
Primary Examiner
Art Unit 1615


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